IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 512 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P. SURESHKUMAR S/O DASHRATH RAMA RAO

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 512 of 2003

MR LN MEDIPALLY for Petitioner No. 1-3

MS PUNANI, APP for Respondent No. 1

MR KIRIT J MACWAN for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/09/2003

ORAL JUDGEMENT

#. Heard Mr.L.N.Medipally, learned counsel for the petitioners, Ms.Punani, learned APP for the respondent State and Mr.Kirit J.Macwan, learned counsel for respondent No.2.

#. A complaint has been filed by respondent No.2 against the present petitioners into the court of the learned Chief Judicial Magistrate, Nadiad under Sections 504, 506(2), 494, 498-A and 114 of IPC and sections 3 and 4 of Anti Dowary Act on 11.10.2000. After recording the verification of the complainant, learned Chief Judicial Magistrate, Nadiad, issued the process against accused Nos.1, 2 and 3, which gave rise to file the present petition.

#. It is argued by the learned counsel for the petitioners that there is no relationship between the husband and the wife, i.e. between petitioner No.1 and the complainant. According to him, divorce has taken place between the parties on 17.2.2000, xerox copy of the divorce deed has been annexed by the petitioners at Annexure-A page 11. Still however, in order to extract money from the petitioners, false and frivolous complaint has been filed by the complainant, which according to him, does not disclose the ingredients of the offence in question.

#. On the other-hand, it is argued by the learned counsel for the respondent complainant that no divorce has taken place between the parties and if at all it is said that the divorce has taken place, the said divorce deed has not been signed by the complainant. He has drawn my attention towards the document placed at Annexure-C wherein it is stated that, even the petition has been filed by the respondent complainant and the same is pending into the court of the learned Civil Judge (Senior Division), Kheda at Nadiad, being H.M.P.No.31 of 2002. It is argued that, even petitioner No.1 has also filed the proceedings into the court of Civil Judge (Senior Division), Adoni, Andhra Pradesh, for restitution of conjugal rights, which is also pending. Drawing my attention towards the complaint in question, he has argued that since the complaint discloses prima facie ingredients of offence, no interference is required in the present proceedings.

#. I have gone through the record of the case, which prima facie establishes the ingredients of the offence in question. It appears that, after recording the verification of the complainant, the trial Court has issued the process, and, therefore, it cannot be said that the trial Court has not applied its mind and the complaint does not disclose the ingredients of the offence in question. Over and above, so far as the question regarding alleged divorce is concerned, the same

is required to be dealt with by the court below at the time of trial. Even other proceedings between the parties are also pending in various courts. Under these circumstances, interference of this Court is not called for, and, hence this petition is required to be rejected.

#. This petition is rejected accordingly. Rule is discharged. Interim relief granted earlier stands vacated forthwith. If petitioner Nos.2 and 3 have got any grievance for attending the court below, it is open for them to apply before the court below for exemption and the court below may consider the said application on its own merits and on sympathetic grounds.

(R.P.Dholakia,J)
(pathan)